

[Second Reprint]
ASSEMBLY, No. 4700

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED OCTOBER 29, 2018

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblywoman PATRICIA EGAN JONES

District 5 (Camden and Gloucester)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

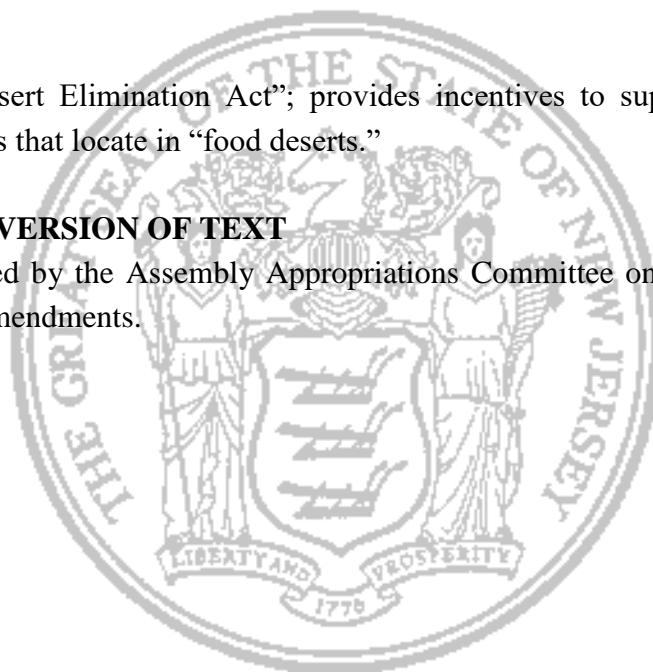
**Assemblywomen Quijano, Pintor Marin, Lampitt, Vainieri Huttie,
Murphy, Assemblymen Mazzeo, Armato, DeAngelo, Chiaravalloti and
Assemblywoman Mosquera**

SYNOPSIS

“Food Desert Elimination Act”; provides incentives to supermarkets and grocery stores that locate in “food deserts.”

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 10, 2018, with amendments.



(Sponsorship Updated As Of: 12/18/2018)

1 AN ACT providing incentives to supermarkets and grocery stores in
2 certain areas and supplementing P.L.1974, c.80 (C.34:1B-
3 1 et seq.) and P.L.2013, c.63 (C.33:1-12.50 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. This act shall be known, and may be cited, as the “Food
9 Desert Elimination Act.”
10

11 2. a. The Legislature finds and declares that: (1) there are
12 certain ²**[urban]**² areas of the State, known as "food desert"
13 communities, in which residents are unable to obtain reasonable and
14 adequate access to nutritious foods and, in particular, to fresh fruits
15 and vegetables; (2) the inaccessibility of nutritious food in
16 ²**[urban]**² food desert communities has been attributed, in large
17 part, to the absence of supermarkets and grocery stores in those
18 communities; (3) low-income families are more likely than others to
19 live in ²**[urban]**² food desert communities and to lack the
20 transportation or financial resources necessary to reach distant
21 wholesome markets; and (4) the establishment of financial
22 incentives to supermarkets and grocery stores is a reasonable means
23 by which to ensure that residents of ²**[urban]**² food desert
24 communities in the State are provided with reasonable access to
25 nutritious, fresh, and delicious produce, and are afforded the
26 opportunity thereby to make healthier eating choices for themselves
27 and for their families.

28 b. The Legislature therefore determines that it is both
29 reasonable and necessary to authorize the New Jersey Economic
30 Development Authority to establish a program that provides
31 incentives to supermarkets and grocery stores to establish and retain
32 locations in ²**[urban]**² food desert communities in order to provide
33 a consistent, and easily accessible, source of fresh produce to
34 residents in those communities.
35

36 3. As used in P.L. , c. (C.) (pending before the
37 Legislature as this bill):

38 “Authority” means the New Jersey Economic Development
39 Authority.

40 “Department” means the Department of Agriculture.

41 ²“Food desert community” or “community” means a physically
42 contiguous area in the State in which residents have limited access
43 to nutritious foods, such as fresh fruits and vegetables, through
44 supermarkets and grocery stores and which has been designated as a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHU committee amendments adopted December 3, 2018.

²Assembly AAP committee amendments adopted December 10, 2018.

1 food desert community pursuant to subsection b. of section 4 of
 2 P.L. , c. (C.) (pending before the Legislature as this
 3 bill).²

4 “Program” means the Food Desert Elimination Program
 5 established in section 4 of P.L. , c. (C.) (pending before the
 6 Legislature as this bill).

7 “Special retail distribution permit” means a nontransferable
 8 permit to sell any alcoholic beverages for consumption ¹~~of~~ off¹
 9 the permitted premises^{1,1} as described in section 10 of
 10 P.L. , c. (C.) (pending before the Legislature as this bill).

11 “Supermarket or grocery store” means a retail facility of at least
 12 18,000 square feet, of which at least 90 percent is occupied by a
 13 full-service supermarket or grocery store.

14 ²~~“Urban food desert community” or “community”~~ means a
 15 physically contiguous urban area in the State in which residents
 16 have limited access to nutritious foods, such as fresh fruits and
 17 vegetables, through supermarkets and grocery stores ¹~~as~~ and
 18 which has been¹ designated ¹~~as such~~¹ pursuant to subsection b. of
 19 section 4 of P.L. , c. (C.) (pending before the Legislature
 20 as this bill).²

21
 22 4. a. There is established the Food Desert Elimination
 23 Program to be administered by the New Jersey Economic
 24 Development Authority. The program shall include tax credit
 25 components, as provided in sections 5 and 6 of
 26 P.L. , c. (C. and C.) (pending before the Legislature as
 27 this bill), and a retail alcoholic beverage permit component, as
 28 provided in sections 7 and 10 of P.L. , c. (C. and C.)
 29 (pending before the Legislature as this bill), in order to incentivize
 30 ¹~~businesses~~ businesses¹ to establish and then retain new
 31 supermarkets and grocery stores in ²~~urban~~² food desert
 32 communities.

33 b. The authority, in consultation with the Department of
 34 Agriculture ²~~and the Department of Community Affairs~~², shall
 35 ¹~~initially~~¹ designate ¹~~the physically contiguous~~ not more than 75
 36 separate¹ ²~~urban~~ geographic² areas that ¹~~are most in need of a~~
 37 supermarket or grocery store¹ ¹~~qualify~~¹ as ²~~urban~~² food desert
 38 communities in this State. ¹~~The authority shall develop criteria for~~
 39 the designation of ²~~urban~~² food desert communities, but each
 40 separate food desert community shall consist of a distinct
 41 geographic area with a single defined border. The criteria shall, at a
 42 minimum, incorporate analysis of ²~~municipal or census tract~~
 43 population size and population density,² municipal or census tract
 44 poverty statistics, food desert information from the United States
 45 Department of Agriculture’s Economic Research Service, and
 46 healthier food retail tract information from the federal Centers for

1 Disease Control and Prevention. ²The authority may also consider
 2 data related to municipal or census tract population size and
 3 population density in making food desert community designations
 4 pursuant to this section.² The authority may designate additional
 5 ²[urban]² food desert communities once every three years
 6 following the effective date of P.L. , c. (C.) (pending
 7 before the Legislature as this bill).¹

8
 9 5. a. For privilege periods beginning on or after January 1
 10 next following the effective date of P.L. , c. (C.)
 11 (pending before the Legislature as this bill), a taxpayer that
 12 establishes and opens for business to the public ¹[a] the first¹
 13 supermarket or grocery store in ¹[an] a designated¹ ²[urban]² food
 14 desert community, and that meets the requirements of this section
 15 and the rules and regulations adopted pursuant thereto, and for the
 16 three privilege periods next following the initial opening, shall be
 17 allowed a credit against the tax due pursuant to section 5 of
 18 P.L.1945, c.162 (C.54:10A-5) in an amount equal to the total
 19 amount the taxpayer is assessed in property taxes by the
 20 municipality in which the supermarket or grocery store is located
 21 during the full privilege period for the property where that
 22 supermarket or grocery store is open for business to the public.

23 b. (1) To qualify for the tax credit allowed pursuant to this
 24 section, a taxpayer shall apply to the authority for a certification,
 25 and the application shall include the following:

26 (a) from the department, a certification that the taxpayer
 27 qualifies as a supermarket or grocery store, as defined in section 3
 28 of P.L. , c. (C.) (pending before the Legislature as this
 29 bill), ¹[and]¹ is located in ²[an urban] a² food desert community
 30 designated pursuant to subsection b. of section 4 of
 31 P.L. , c. (C.) (pending before the Legislature as this bill)
 32 ¹, and is the first supermarket or grocery store to be established and
 33 opened for business in that designated food desert community after
 34 the effective date of P.L. , c. (C.) (pending before the
 35 Legislature as this bill)¹; and

36 (b) from the municipality in which the supermarket or grocery
 37 store is located, a certification of the amount of property tax the
 38 taxpayer is assessed for the applicable privilege period pursuant to
 39 subsection a. of this section.

40 (2) The order of priority of the application of the credit allowed
 41 pursuant to this section and any other credits allowed against the tax
 42 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
 43 a privilege period shall be as prescribed by the Director of the
 44 Division of Taxation in the Department of the Treasury. The
 45 amount of the credit applied pursuant to this section against the tax
 46 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
 47 shall not reduce a taxpayer's tax liability for a privilege period to an

1 amount less than the statutory minimum provided in subsection (e)
2 of section 5 of P.L.1945, c.162 (C.54:10A-5). Any credit shall be
3 valid in the privilege period in which the certification is approved
4 and any unused portion thereof may be carried forward into the next
5 10 privilege periods or until depleted, whichever is earlier.

6
7 6. a. For taxable years beginning on or after January 1 next
8 following the effective date of P.L. , c. (C.) (pending
9 before the Legislature as this bill), a taxpayer that establishes and
10 opens for business to the public ¹**[a]** the first¹ supermarket or
11 grocery store in ¹**[an]** a designated¹ ²**[urban]**² food desert
12 community, and that meets the requirements of this section and the
13 rules and regulations adopted pursuant thereto, and for the three
14 taxable years next following the initial opening, shall be allowed a
15 credit against the tax due pursuant to N.J.S.54A:1-1 et seq., in an
16 amount equal to the total amount the taxpayer is assessed in
17 property taxes by the municipality in which the supermarket or
18 grocery store is located during the full tax year for the property
19 where that supermarket or grocery store is open for business to the
20 public.

21 b. (1) To qualify for the tax credit allowed pursuant to this
22 section, a taxpayer shall apply to the authority for a certification,
23 and the application shall include the following:

24 (a) from the department, a certification that the taxpayer
25 qualifies as a supermarket or grocery store, as defined in section 3
26 of P.L. , c. (C.) (pending before the Legislature as this
27 bill), ¹**[and]**¹ is located in ²**[an urban]** a² food desert community
28 designated pursuant to subsection b. of section 4 of
29 P.L. , c. (C.) (pending before the Legislature as this bill)
30 ¹, and is the first supermarket or grocery store to be established and
31 opened for business in that designated food desert community after
32 the effective date of P.L. , c. (C. and C.) (pending
33 before the Legislature as this bill)¹; and

34 (b) from the municipality in which the supermarket or grocery
35 store is located, a certification of the amount of property tax the
36 taxpayer is assessed for the applicable taxable year pursuant to
37 subsection a. of this section.

38 (2) The order of priority of the application of the credit allowed
39 pursuant to this section and any other credits allowed against the tax
40 imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall
41 be as prescribed by the Director of the Division of Taxation in the
42 Department of the Treasury. The amount of the credit applied
43 pursuant to this section against the tax imposed pursuant to
44 N.J.S.54A:1-1 et seq. shall not reduce a taxpayer's tax liability for a
45 taxable year to an amount less than zero. Any credit shall be valid
46 in the taxable year in which the certification is approved and any

1 unused portion thereof may be carried forward into the next 10
2 taxable years or until depleted, whichever is earlier.

3 c. A business entity that is classified as a partnership for
4 federal income tax purposes shall not be allowed the credit directly
5 under N.J.S.54A:1-1 et seq., but the amount of credit of the
6 taxpayer in respect of a distributive share of partnership income
7 shall be determined by allocating to the taxpayer that proportion of
8 the credit acquired by the partnership that is equal to the taxpayer's
9 share, whether or not distributed, of the total distributive income or
10 gain of the partnership for its taxable year ending within or with the
11 taxpayer's taxable year.

12 A taxpayer that is a New Jersey S corporation shall not be
13 allowed the credit directly under N.J.S.54A:1-1 et seq., but the
14 amount of credit of a taxpayer in respect of a pro rata share of S
15 corporation income shall be determined by allocating to the
16 taxpayer that proportion of the credit acquired by the New Jersey S
17 corporation that is equal to the taxpayer's share, whether or not
18 distributed, of the total pro rata share of S corporation income of the
19 New Jersey S corporation for its taxable year ending within or with
20 the taxpayer's taxable year.

21

22 7. ¹After consultation with the Division of Alcoholic
23 Beverage Control in the Department of Law and Public Safety, the
24 Division of State Police, and the municipality in which a
25 supermarket or grocery store that qualifies for incentives under the
26 program is located, the The¹ New Jersey Economic Development
27 Authority ¹may shall¹ direct the Director of the Division of
28 Alcoholic Beverage Control to issue, consistent with section 10 of
29 P.L. , c. (C.) (pending before the Legislature as this bill), a
30 special retail distribution permit to one or more individual
31 corporations or other types of legal entities operating ¹a the first¹
32 supermarket or grocery store¹ established and opened for business
33 in each designated ²urban² food desert community after the
34 effective date of P.L. , c. (C. and C.) (pending before
35 the Legislature as this bill)¹ that qualifies for incentives under the
36 program.

37

38 8. The authority, in consultation with the department, the
39 Director of the Division of Taxation in the Department of the
40 Treasury, the Superintendent of State Police, and the Director of the
41 Division of Alcoholic Beverage Control shall adopt, pursuant to the
42 "Administrative Procedure Act," P.L.1968, c.410 ¹(¹C.52:14B-1 et
43 seq.), rules and regulations necessary to carry out the provisions of
44 P.L. , c. (C.) (pending before the Legislature as this bill).

45

46 9. Within one year of the effective date of
47 P.L. , c. (C.) (pending before the Legislature as this bill)

1 and for the next three years thereafter, the authority shall annually
2 submit a report to the Governor, the State Treasurer, and, pursuant
3 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on
4 the effectiveness of the tax credit in establishing supermarkets and
5 grocery stores in ²[urban]² food desert communities.

6
7 10. a. The Director of the Division of Alcoholic Beverage
8 Control, upon the direction of the New Jersey Economic
9 Development Authority ¹[and the approval of the municipal
10 governing body by ordinance, may] ^{2,2} pursuant to section 7 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 shall¹ issue a special retail distribution permit to an individual
13 corporation or other type of legal entity for use in connection with
14 the operation of a supermarket or grocery store established and
15 located within ²[an “urban food”] a “food² desert community”
16 designated pursuant to subsection b. of section 4 of
17 P.L. , c. (C.) (pending before the Legislature as this bill).
18 The permit shall entitle the holder to sell alcoholic beverages in
19 original containers for consumption off the premises of the
20 supermarket or grocery store.

21 A permit issued pursuant to this section shall ¹be restricted to the
22 premises of the supermarket or grocery store for which the permit
23 was issued, and shall¹ not be transferred for use in connection with
24 another premises.

25 b. The restriction concerning the number of plenary retail
26 distribution licenses that may be issued in a municipality pursuant
27 to section 2 of P.L.1947, c.94 (C.33:1-12.14) and the limitation on
28 the acquisition of alcoholic beverages licenses pursuant to section 1
29 of P.L.1962, c.152 (C.33:1-12.31) shall not be applicable to a
30 permit issued pursuant to this section.

31 c. The fee for the initial issuance of a permit issued pursuant to
32 this section shall be based upon the average sales price of plenary
33 retail distribution licenses in the municipality during the five years
34 immediately preceding the enactment of P.L. , c. (C.)
35 (pending before the Legislature as this bill). If less than three
36 plenary retail distribution licenses have been sold in the
37 municipality within the previous five years, the municipality shall
38 obtain an appraisal, at the applicant's expense, to determine the
39 appropriate fair market value of the permit. The appraisal process
40 shall include an examination of previous transactions in the
41 municipality, as the case may be, and shall reflect what a willing
42 buyer, under no pressure to buy, would pay a willing seller, under
43 no pressure to sell, for a plenary retail distribution license in the
44 municipality. The initial issuance fee established pursuant to this
45 section for a special retail distribution permit shall be reduced by
46 the fair market value of the limitation on transferability, as set forth
47 in subsection a. of this section.

1 d. A special retail distribution permit issued pursuant to this
2 section shall not be issued to any person who would not qualify as a
3 plenary retail distribution licensee pursuant to Title 33 of the
4 Revised Statutes and rules and regulations of the director.

5 e. Except as otherwise provided by this section, a permit shall
6 be used in a manner consistent with a plenary retail distribution
7 license issued pursuant to R.S.33:1-12 and shall be subject to any
8 other fees and regulations promulgated by the director.

9
10 11. This act shall take effect on the first day of the seventh
11 month next following enactment, except that the New Jersey
12 Economic Development Authority and the Division of Alcoholic
13 Beverage Control may take administrative action in advance as
14 necessary to effectuate the bill.